warranty made by payee and was worth only $500. The notes were secured by a chattel mortgage to the payee, which was assigned to plaintiff and which provided that if default should be made in payment of the notes or any part thereof, when due, the whole amount secured by the mortgage should become due and payable. Two of the notes were overdue when the whole series was acquired by the plaintiff. Each note contained this clause: "This note is secured by chattel mortgage to American Type Founder's Company of even date herewith on personal property in Sioux Falls, State of So. Dak." Plaintiff sued to foreclose the mortgage, and defendant sought to counterclaim for the breach of the warranty. *Held,* that plaintiff acquired none of the notes before maturity, but was charged with notice as to defenses against all the notes though on their face some of them were not yet due. *Rowe* v. *Scott* (S. D. 1911) 132 N. W. 695.

"An indorsee in due course is one who in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer." REV. CIV. CODE, § 2199. The authorities agree that one taking a note after maturity and dishonor is chargeable with knowledge of equities existing in favor of the maker. *James* v. *Yaeger,* 86 Cal. 184, 24 Pac. 1005; *Williams* v. *Nicholson,* 25 Ga. 560; *Jenkins* v. *Bauer,* 8 Bradw. 634; *Burroughs* v. *Nettles,* 7 La. 113; *Comstock* v. *Draper,* 1 Mich. 481; *Chappell* v. *Allen,* 38 Mo. 213; *Tillou* v. *Britton,* 9 N. J. L. 152; *Fowler* v. *Brantly,* 14 Pet. 318, 10 L. ed. 473. When one takes several notes constituting one transaction, but due at different times, the question whether the fact that one is due and unpaid is notice to the purchaser of all to put him on his guard as to each, is one as to which the decisions of the courts in this country are not in harmony. The following cases hold the affirmative. *Harrell* v. *Broxton,* 78 Ga. 129, 3 S. E. 5; *Hull* v. *Swarthout,* 29 Mich. 249; *Harrington* v. *Claflin,* 91 Tex. 294, 42 S. W. 1055; *Lockwood* v. *Noble,* 113 Mich. 418, 71 N. W. 856. A contrary view is expressed in *Boss* v. *Hewitt,* 15 Wis. 260, in which the court held that an indorsee of several notes of the same maker, secured by one mortgage, bearing the same date, and payable to the order of the same person at different periods, is not chargeable with notice of any equitable defense of the maker against such of the notes as were not due at the time of the indorsement, by reason of the fact that one of the notes was then overdue.

BILLS AND NOTES—BONA FIDE PURCHASER—PAYMENT OF FORGED CHECK—RECOVERY OF PAYMENT.—P bank paid a check, bearing the forged signature of its depositor, to D bank, a holder in due course. D did not in any way contribute to the fraud, and was not guilty of negligence. *Held,* that P cannot, on discovering the forgery afterwards, recover the money paid. *First Nat'l. Bank of Cottage Grove* v. *Bank of Cottage Grove* (Ore. 1911) 117 Pac. 293.

The question decided in the case under discussion is one about which authorities are in conflict. The doctrine that a drawee cannot recover payment to a holder in due course of a forged instrument was first announced by Lord

MANSFIELD in *Price* v. *Neal*, 3 Burr. 1355. It has been followed by the principal case and many of the courts in this country. *National Bank of Commerce in St. Louis* v. *Mechanics American Nat. Bank*, 148 Mo. App. 1, 127 S. W. 429; *Northwestern Nat. Bank* v. *Bank of Commerce of Kansas City*, 107 Mo. 402, 17 S. W. 982; *Jones* v. *Miners' & Merchants' Bank*, 144 Mo. App. 428, 128 S. W. 829; *Bank of Williamson* v. *McDowell County Bank*, 66 W. Va. 545, 66 S. E. 761; *Redington* v. *Woods*, 45 Cal. 406, 13 Am. Rep. 190; *First Nat. Bank of Quincy* v. *Ricker*, 71 Ill. 439, 22 Am. Rep. 104; *National Bank* v. *Ninth National Bank*, 46 N. Y. 77; *Ellis* v. *Ohio Life Ins. Co.*, 4 Ohio St. 628, 64 Am. Dec. 610. The reason of the rule is that a drawee is bound to know the signature of the drawer. The rule in *Price* v. *Neal, supra,* has been criticised as inequitable and fundamentally wrong (2 MORSE, BANKS & BANKING, § 464). Many of the text-writers on negotiable instruments declare that when a bank, upon which a check is drawn, pays it upon the forged signature of the drawer, the money can be recovered as paid under mistake of fact. STORY, PROMISSORY NOTES, §§ 379-529; 2 PARSONS, NOTES AND BILLS, pp. 80 to 81. There is a line of decisions stating the rule as follows: "The drawee of a forged check, who has paid the same, may, upon discovery of the forgery, recover the money paid from the party who received it, even though the latter was a holder in due course, provided the latter has not been misled or prejudiced by the failure of the drawee at the time of payment to detect the forgery, and that the burden of showing that he has been misled or prejudiced is upon the party claiming the right to retain the money." *First Nat. Bk. of Lisbon* v. *Wyndmere Bank*, 15 N. D. 299, 108 N. W. 546; *Canadian Bank* v. *Bingham*, 30 Wash. 484, 71 Pac. 43, 60 L. R. A. 955; *American Express Co.* v. *State Nat. Bank* (Okl.) 113 Pac. 711; *First Nat. Bk. of Danvers* v. *Salem Bank*, 151 Mass. 280, 24 N. E. 44, 21 Am. St. Rep. 450. This rule is more equitable. It is clear that if the drawee should discover the forgery at the time of presentment, payment would be refused. To allow the drawee to recover payment on discovering the forgery after payment will not place the holder in a worse position than he would be if the forgery had been detected at the time of presentment.

BILLS AND NOTES—INVALIDITY OF NOTE—RECOVERY UPON ORIGINAL CONSIDERATION.—George T. Smiley and Alfred Larsen were partners doing business under the firm name, Smiley and Larsen. Smiley, the financial manager, gave to P bank a partnership note after Larsen sold out his interest in the tangible copartnership property, and after this fact and the request by Larsen not to loan any more money to the copartnership had been communicated to the bank. The note was given to pay partnership checks issued before Larsen withdrew from the firm. The bank sued both partners on the note. *Held,* that the bank could recover against the copartners upon the original obligation in the amount of the unauthorized note, notwithstanding its invalidity. *First Nat'l. Bank of Antigo* v. *Larsen et al.* (Wis. 1911) 132 N. W. 610.

An action can be maintained on the original consideration of a promissory note, although the note itself is invalid. *Humphreys* v. *Wilson*, 43 Miss. 328; *Edgell* v. *Stanford*, 6 Vt. 551; *Councilman* v. *Towson Nat. Bank*, 103 Md.